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No. 94-2021

In the
Supreme Court of the United States
October Term, 1994

CAROL A. GERACI,

Petitioner,

vs.

ECKANKAR, a California nonprofit corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Minnesota Court of Appeals' holding that the Minnesota Constitution requires dismissal of petitioner's claims is an adequate and independent state ground for its decision, which deprives this Court of jurisdiction under 28 U.S.C. § 1257.

2. Whether the Minnesota district court can, consistent with both the Minnesota Constitution and the Establishment Clause of the United States Constitution, engage in an inquiry to determine whether the excommunication of petitioner was in accordance with the religious law of the church.

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No. 94-2021

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

CAROL A. GERACI,

Petitioner,

and

ECKANKAR, a California nonprofit corporation,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

Petitioner seeks review of a decision of the Minnesota Court of Appeals[1] that is based upon adequate and independent state grounds under the Freedom of Conscience Clause of the Minnesota Constitution. In addition to this

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[1] The Petition is styled as seeking a writ of certiorari to the Minnesota Supreme Court rather than to the Minnesota Court of Appeals. Where, as here, the higher court declines to exercise its authority, the judgment of the intermediate court rather than the order of refusal by the higher court is the judgment reviewable under 28 U.S.C. § 1257. *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676, 678 n. 1 (1986); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 160 (1954).

glaring jurisdictional defect -- which petitioner does not address -- the Establishment Clause argument presented in the Petition is unsupported by authority from this or any lower court. Finally, although petitioner asks the Court to rule on the constitutionality of the Religious Freedom Restoration Act of 1993, the courts below did not apply the Act and thus it is not at issue. The Petition is therefore without jurisdictional or substantive basis.

STATEMENT OF CASE

1. Respondent Eckankar, a California nonprofit corporation, is a religion and hierarchical church that has subordinate churches in 48 states and throughout the world. Pet. App. A4. There are tens of thousands of followers of Eckankar worldwide. About half of its membership is in the United States and half is spread through more than 100 other countries. Eckankar is a well recognized religion (see Pet. App. A4, A26, A30), and petitioner does not contest that its beliefs are sincerely held. *Id.* at A13.

Petitioner Carol Geraci became a member of Eckankar in 1986 and received her Second Initiation -- which signifies a deepened commitment to the faith -- in 1989. Pet. App. A5. Shortly thereafter, she was hired as a computer systems analyst at the seat of church governance -- Eckankar's international church headquarters in Minnesota. Eckankar's computer systems provide the means of communication with its worldwide membership, and are a repository for sensitive and confidential clergy communications, religious and doctrinal correspondence, and church membership records. Pet. App. A27; Wollan 10/9/92 affidavit; (attached to Eckankar's 10/21/92 Motion for Summary Judgment). Petitioner's job provided her access to and control over the confidential records in the religion's central computer system

(Wollan 10/9/92 affidavit), and contact with the church's Board of Trustees. Membership status is a condition of employment with the church (*id.* at A5), and employment decisions and the assignment of specific jobs are connected to matters of church doctrine and practice. Such decisions are based in part upon spiritual insights and guidance. *Id.* at A27. Petitioner was expected to understand and follow the spiritual purposes, doctrines, and activities of the church as she performed her duties in the course of her employment. Pet. App. A26-27.

During the last six to eight months of her employment at Eckankar's headquarters, petitioner stopped attending employee worship services, and her supervisor noted a serious "spiritual gap" in petitioner which the church sought to address. Geraci depo., pp. 719-722, 758; Wollan depo., pp. 398-400, 407, 421; (attached to Eckankar's 12/8/93 Opp. to Motion to Reconsider). Over a period of months and prior to sending notice to Eckankar of any legal claims, petitioner rejected Eckankar spiritual precepts, refused to accept church efforts to bridge the spiritual gap, and sought to arouse discord and disharmony in the church community and hierarchy. *Id.*, Geraci depo. at 599-601, 604-605, 722-723, 758; Wollan 11/17/93 affidavit; Heyl 10/9/92 affidavit. Later, the Director of Spiritual Services, Priest John K. Heyl, commenced a spiritual review which included a meeting with petitioner. Pet. App. A27. In August 1991, petitioner's membership in the church was suspended after the spiritual review established that she had failed to live by the spiritual laws and rules for church members and had demonstrated a withdrawal from the spiritual community of the church. Pet. App. A4-A5, A27. She had been found to be apostate, *id.* at A26, and therefore was suspended (excommunicated) from the religion. At no time has petitioner denied that she was apostate. Because church membership was and is a condition

of employment, petitioner's employment was terminated. *Id.* at A5, A27.

2. Petitioner brought suit in the Minnesota state court on July 8, 1992, alleging statutory sex discrimination and reprisal claims under the Minnesota Human Rights Act, Minn. Stat. § 363, along with various common law claims, based upon the suspension of her church membership and her subsequent termination (the "excommunication claims"). She also brought discrimination and promissory estoppel claims relating to the terms and conditions of her employment. The district court dismissed the excommunication claims under the "Freedom of Conscience" Clause of the Minnesota Constitution (Pet. App. A47),[2] and the Establishment Clause of the United States Constitution. Pet. App. A6, A45. Also, applying the test set forth by this Court in *Employment Div., Dep't of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990), the court held that dismissal of these same claims was not required under the Free Exercise Clause. Later, after extensive discovery, the court dismissed on nonconstitutional grounds petitioner's promissory estoppel claim, all but one of her defamation claims, and her claim of gender discrimination

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[2] The Freedom of Conscience Clause provides:

> The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. . . .

Minn. Const. art. I, § 16.

in the terms and conditions of employment.[3] The dismissal of these three claims was affirmed by the Minnesota Court of Appeals, also on nonconstitutional grounds (Pet. App. A7-A12), and no issue regarding these claims is raised in the Petition.

The Minnesota Court of Appeals also affirmed the district court's holding that dismissal of the excommunication claims was required by both the Minnesota Constitution and the Establishment Clause. It declined to rule, however, on Eckankar's argument on appeal that the district court should have applied the "compelling interest test," restored by the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (1993) (codified as 42 U.S.C. § 2000bb), rather than the *Smith* test in its Free Exercise analysis. Because the excommunication claims were otherwise "barred by the Establishment Clause and Minnesota's Freedom of Conscience Clause," the court held, "the issue is moot." Pet. App. A19.

Geraci's petition to the Minnesota Supreme Court for further review of the rulings of the court of appeals was denied. Pet. App. A1.

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[3] The district court dismissed these claims on Eckankar's post-discovery summary judgment motion pursuant to the court's Order and Memorandum dated February 3, 1994. (Petitioner has failed to include this Order and Memorandum in her appendix as required by Rule 14(k) of this Court.)

REASONS FOR DENYING THE PETITION

A. The Court Lacks Jurisdiction to Review the Decision Below Because There Are Adequate and Independent State Grounds for the Court of Appeals' Affirmance of the Dismissal of Petitioner's Claims

As this Court has long recognized, "where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, [the Court's] jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). *See Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977); *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981). If the state court decision clearly indicates that it is "alternatively based on bona fide separate, adequate, and independent grounds, [the Supreme Court] * * * will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). The jurisdictional concern is that the Court cannot "render an advisory opinion, and if the same judgment would be rendered by the state court after [the Supreme Court] corrected its views of federal laws, [the Supreme Court's] review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn, 324* U.S. 117, 126 (1945).

Absent from the Petition is any mention of the independent state grounds upon which the Minnesota Court of Appeals affirmed the district court's dismissal of the excommunication claims. According to the Petition, the court of appeals held only "that Eckankar was entitled to dismissal of Geraci's discharge claims because their enforcement would violate the Establishment Clause of the First Amendment." Pet. 4. However, there were two grounds for the court of appeals' deci-

sion, and the opinion of the court of appeals leaves no doubt that the state constitutional basis for its decision "is independent of the other [the federal ground] and broad enough to sustain the judgment." *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917).

The state court judgment need not literally state that its decision is supported by adequate and independent state grounds, so long as it is "indicate[d] with requisite clarity" in the opinion. *Sochor v. Florida*, 504 U.S. 527, 534 (1992). Here, the court of appeals made it abundantly clear that the state law ground for its decision was independent of the federal ground and adequate to support the judgment. Thus, this Court lacks jurisdiction under 28 U.S.C. § 1257 and Article III of the U.S. Constitution. *Black v. Cutter Laboratories*, 351 U.S. 292, 300 (1956).

In enumerating the issues to be decided, the Court of Appeals demonstrated the independence of the state and federal grounds for its holding by specifying them as separate "Issues" to be addressed:

ISSUES

* * *

4. Does the Minnesota Constitution bar judicial review of Geraci's discharge-based claims?

5. Does the Establishment Clause bar judicial review of Geraci's discharge-based claims?

Pet. App. A6-7. *See California v. Freeman*, 488 U.S. 1311, 1314 (1989) (O'Connor, J., denying application for stay) (state statutory ground for California Supreme Court decision was independent of First Amendment ground where

the discussion of these grounds "[wa]s divided into two subsections" of the state supreme court's opinion).[4]

The court of appeals also demonstrated the independence of the bases for its holding by addressing whether the excommunication claims were barred by either state or federal law in separate sections of the opinion. Noting that the Freedom of Conscience Clause "affords greater protection of religious freedom" than does the Free Exercise Clause of the First Amendment (Pet. App. A13), the court addressed the requirements of the Minnesota Constitution in section 4 of the opinion, and found that the excommunication claims were barred under the four-prong test set forth by the Minnesota Supreme Court in *Hill-Murray Fed'n of Teachers v. Hill-Murray High School, 487* N. W. 2d 857 (Minn. 1992). The *Hill-Murray* test is expressly and solely an interpretation of state law.[5]

Applying the *Hill-Murray* test, the court of appeals found no dispute that Eckankar's religious beliefs are sincerely held (Pet. App. A13), and that the eradication of discrimination where it exists is a compelling state interest. Pet. App. A14 (citing *State by McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 854 (Minn. 1985)). Under the second prong, however, the court found that "[f]urther application of the [Minnesota Human Rights] Act to Eckankar, * * * would ex-

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[4] The independent state and federal grounds for the court of appeals' decision also are stated as separate points in the syllabus to the opinion. Pet. App. A3.

[5] The four-prong test is (1) whether the objector's belief is sincerely held; (2) whether the regulation burdens the exercise of religious beliefs; (3) whether the state interest in regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means. *Hill-Murray*, 487 N.W.2d at 865.

cessively burden its religious beliefs." Pet. App. A14. In its opinion, the appellate court relied upon language from the *Hill-Murray* decision which held that a church-run school had the right under the Minnesota Constitution "to require compliance with religious doctrine" and could "remove any person who fail[ed] to follow religious standards." Pet. App. A14-A15. Thus, the court concluded -- solely on the basis of state law -- that the excommunication claims had been properly dismissed by the district court.

In the next section of the opinion, as an alternative ground for affirmance, the appellate court concluded that judicial review of petitioner's excommunication claims would also violate the Establishment Clause of the First Amendment. Pet. App. A15-A18 (Section 5). The court first rejected petitioner's argument that the Establishment Clause bars review of only those employment claims involving ministers and clergy, and went on to hold that "the courts may not review Geraci's discharge-based claims" under either *Lemon v. Kurtzman,* 403 U.S. 602 (1971), or *Board of Educ. v. Grumet,* 114 S. Ct. 2481 (1994). Pet. App. A16. The opinion leaves no doubt that the Establishment Clause and the Minnesota Constitution were independent bases for the court of appeals' holding.

This treatment of the issue is consistent with rulings of the Minnesota Supreme Court, which draw a clear distinction between the requirements of the Freedom of Conscience Clause and those under the First Amendment of the United States Constitution. As that court has held, the language of the Freedom of Conscience clause "is of a distinctly stronger character than the federal counterpart . . . ." *State v. Hershberger,* 462 N.W.2d 393, 397 (Minn. 1990). In *Hershberger,* the Minnesota Supreme Court declined to engage in a Free Exercise analysis under the standard that had

been recently set forth in *Smith,* because it found that the protection of religious freedom afforded by the Minnesota Constitution was broader than under the First Amendment. Thus, the court held, "[i]t is unnecessary to rest our decision on the uncertain meaning of *Smith II* when the Minnesota Constitution alone provides an independent and adequate state constitutional basis on which to decide." *Hershberger,* 462 N.W.2d at 396-97 (citing *Michigan v. Long,* 463 U.S. 1032 (1983)). As in *Hershberger,* the court of appeals in this case found it unnecessary to rule on whether the district court should have applied the *Smith* test rather than the compelling state interest test in its analysis under the Free Exercise Clause, because the protection afforded by the state constitution provided independent grounds for affirming the holding of the district court. *See* Pet. App. A19.

The fact that the appellate court made reference in its discussion of the Minnesota Constitution to cases decided under the First Amendment of the United States Constitution (*see* Pet. App. A15), does not undermine the independent state grounds of its holding. The Minnesota Supreme Court has stated that in construing the Freedom of Conscience Clause, it is appropriate to look to such "creatures of federal doctrine" as "compelling state interest" and "least restrictive alternative" simply to "provide guidance" in interpreting the Minnesota Constitution. *Hershberger,* 462 N.W.2d at 398 (finding "independent and adequate state constitutional basis" for result under the Freedom of Conscience Clause) *id.* at 397.[6]

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[6] Where a state court relies on federal precedent in deciding an issue under state law, it need only make clear "that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached." *Michigan v. Long,* 463 U.S. at 1041. The Minnesota Supreme Court has stated that, as a general matter, "a decision of the United

The court of appeals' explicit reliance on state grounds for its decision in this case is in sharp contrast to cases like *Michigan v. Long,* in which the state court decision rested "primarily on federal law," and the adequacy and independence of the state law grounds was "not clear from the face of the opinion." *Id.* at 1040-41. *Cf. Arizona v. Evans,* 115 S. Ct. 1185, 1190 (1995) (state grounds not adequate and independent where "Arizona Supreme Court's decision to suppress the evidence was based squarely upon its interpretation of federal law"); *Illinois v. Rodriguez,* 497 U.S. 177, 182 (1990) ("[t]he opinion does not rely on (or even mention) any specific provision of the Illinois Constitution, nor even the Illinois Constitution generally").

Unlike the state court holding under review in *Michigan v. Long,* in which "[n]ot a single state case was cited to support the state court's holding" (*463 U.S.* at 1043), the court of appeals here based its determination under the Freedom of Conscience Clause on a detailed examination and application of state law. Pet. App. A12-15. Its holding under the Minnesota Constitution was in no sense based "primarily on federal law."

For this reason, the Petition must be denied.

States Supreme Court interpreting a comparable provision of the federal constitution that * * * is textually identical to a provision of [the] [Minnesota] [C]onstitution, is of inherently persuasive, although not necessarily compelling, force." *In re Welfare of E.D.J.,* 502 N.W.2d 779, 781 (Minn. 1993) (quoting *State v. Fuller,* 374 N.W.2d 722, 726-27 (Minn. 1985)).

B. The Minnesota Court of Appeals Correctly Held that Plaintiff's Claims Are Barred by the Establishment Clause

The constitutional holding of the court of appeals is a routine and unexceptional application of well established principles to this particular factual context. It presents no conflict with any decision of this or any lower court. Nor does it, as suggested by petitioner, insulate religious bodies from liability for purportedly unlawful secular employment decisions. Rather, the decision expressed the narrow proposition that petitioner's excommunication was a core religious matter that could not be examined for pretext without violating the Minnesota Constitution or the Establishment Clause of the U.S. Constitution.

Petitioner does not dispute that church membership is a prerequisite to employment at the international headquarters of the Eckankar religion (Pet. App. A17), nor does she allege she was subjected to unlawful discrimination on the basis of religion. *Id.* at A14. There was no dispute that respondent limited employment to members in good standing of the religion. Nor is there any dispute that petitioner was, in fact, excommunicated from the church. Thus, the only disputed question of material fact raised by petitioner's complaint was whether the church's decision to excommunicate her was properly based on spiritual considerations, as opposed to being a pretext for sex discrimination.

It is hard to imagine a question less appropriate for civil court adjudication. As the court of appeals observed, it could not "devise a way to determine if this reason for [petitioner's] termination was a pretext for discrimination without questioning the reasons for the excommunication and the veracity of those reasons." Pet. App. A17-18. "Further litigation of

Geraci's claims would require a court to question Eckankar's monitoring of Geraci's adherence to church doctrine, its reasons for excommunication, and the veracity of Eckankar's responses." *Id.* at A15. It would violate central principles of separation of church and state for a secular court to second-guess the determinations of ecclesiastical bodies regarding so fundamental a religious issue as whether a member adheres to the precepts of the faith. As this Court has noted, "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Board,* 450 U.S. 707, 716 (1981).

The court of appeals thus held that judicial inquiry into Eckankar's reasons for excommunicating petitioner would cause excessive entanglement between church and state (Pet. App. A16-17) (citing *Lemon v. Kurtzman,* 403 U.S. 602 (1971)), and would violate "neutrality principles" under the Establishment Clause. Pet. App. A16-17 (citing *Board of Educ. v. Grumet,* 114 S. Ct. 2481 (1994)). The dismissal of petitioner's excommunication claims under this Court's Establishment Clause jurisprudence is plainly required.

Nonetheless, petitioner contends, Pet. 5, that the Minnesota court's application of the Establishment Clause "conflicts with federal appellate and U.S. supreme court (sic) decisions" -- a position that is totally unsupported by any case law from this or any other court. Pet. App. A5. Notably, petitioner cites no decision of any court that even remotely suggests that a civil court may intrude into the important and central religious question of excommunication. In fact, petitioner fails even to mention the Supreme Court authority on which the state court based its holding under the Establishment Clause. Furthermore, the cases on which she relies contradict her position.

The court below correctly relied on this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). In that decision, the Court held that state courts, when adjudicating civil cases, must defer to the decision of the highest church tribunals of hierarchical church organizations in matters touching doctrine and discipline. The Court held that "the First Amendment prohibits" civil courts from inquiring *either* into the "procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow," *or* into the "substantive criteria by which they are supposedly to decide the ecclesiastical question." *Id.* at 713. The Court has stressed that "questions of church discipline * * * are at the core of ecclesiastical concern" (*id.* at 717), and must be left to internal church governance, without governmental interference. "[W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity. . . ." *Id.* at 709. For a civil court to interpret church law in a case of church discipline such as this would present a "substantial danger that the State will become entangled in essentially religious controversies. . ." *Id.* at 709. *Accord Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952) (recognizing religious organizations' "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine") (citing *Watson v. Jones*, 13 Wall. 679, 727 (1871)); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by [governmental entities] which may impinge the rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions"); *Rayburn v. General Conference of Seventh Day Adventists*, 772 F.2d

1164, 1169 (4th Cir. 1985), *cert. denied,* 478 U.S. 1020 (1986) (in "quintessentially religious" matters, "the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content") (citing *Milivojevich*, 426 U.S. at 720).

In the instant case, the highest authorities of a hierarchical church determined that petitioner failed to meet the church's religious standards and ceased to have faith in the spiritual teachings of the Eckankar religion. Accordingly, she was excommunicated. Pet. App. A5, A26. Petitioner seeks to require the civil courts of Minnesota to inquire into the procedural regularity and substantive validity of that determination. The basis for petitioner's claim is that the church's decision to excommunicate her was not justified under the tenets of its religious doctrine, but was rather a pretext for discrimination. Petitioner contests the proposition that she was excommunicated and then discharged "because she lost her faith" (Pet. 3), and asks that a Minnesota jury be permitted to reexamine that issue as a matter of fact.

To inquire into the reasons behind the petitioner's excommunication would entail -- as the district court found -- a "thorough inquiry into the respective roles of the [respondent's] director of spiritual services, their board of directors, their 'Spiritual Council,' the purpose and scope of their spiritual review process and the spiritual and doctrinal underpinnings of the [respondent's] hierarchical structure and spiritual review process." Pet. App. A45. It would also force discovery into religious discipline of other members of the church and the reasons for their discipline, for purposes of showing comparative treatment. It would require the court to determine if the church had properly applied its religious law. As in *Milivojevich,* this would require the court to "evaluat[e] conflicting testimony concerning internal church procedures"

and second-guess "the interpretations of * * * the Church's highest tribunals." *Milivojevich,* 426 U.S. at 718. "[T]his is exactly the inquiry that the First Amendment prohibits." *Id.* at 713.

Contrary to petitioner's suggestion at page 9 of her petition, the Minnesota courts did not simply accept "labeling" of the reason for petitioner's discharge as "core ecclesiastical." Rather, respondent provided a substantial threshold showing to the courts below concerning its religious beliefs, how they apply to church members, and how they applied to petitioner. Pet. App. A4-5, A26-A27. This undisputed submission included affidavits from Eckankar's Director of Spiritual Services, its President, and documentary evidence. Scrutiny of this showing correctly led the lower courts to conclude that the excommunication claims involved matters of core church doctrine and discipline which must be left to internal church governance. Pet. App. A13-A15, A17-18.

None of the cases cited by petitioner are in conflict with the court of appeals' reasoning. First, petitioner contends that the court of appeals' decision conflicts with this Court's holding in *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986). In that case, the Court determined only that, based upon *Younger v. Harris*, 401 U.S. 37 (1971), the district court should have abstained from adjudicating the school's § 1983 case against the Ohio Civil Rights Commission. Far from rejecting the school's constitutional defenses, the Court simply held that the school would have "an adequate opportunity to raise its constitutional claims" within the context of the state court proceeding. 477 U.S. at 628, *see also id.* at 629. *Dayton Christian Schools* does not alter the constitutional analysis once those issues are raised by a religious institution. In the

instant case, the church has raised its constitutional defenses in precisely the way *Dayton Christian Schools* directs. To the extent petitioner means to suggest that under *Dayton Christian Schools* there can be no First Amendment protection for a religious organization against a discrimination claim, petitioner's position is contradicted, not supported, by the decision.

Petitioner cites two circuit court cases (Pet. 6-7) in which application of the Age Discrimination in Employment Act to a religious institution was found not to violate the First Amendment because the institution had asserted no religious reason for the challenged employment action. *See Weissman v. Congregation Shaare Emeth,* 38 F.3d 1038, 1045 (8th Cir. 1994) ("the Temple has asserted no religious grounds for Weissman's termination" and application of the ADEA to the Temple is not "sufficient to pose a significant risk of infringement upon the First Amendment where none of the reasons asserted for the adverse employment action rests on religious grounds"); *Geary v. Visitation of the Blessed Virgin Mary Parish School,* 7 F.3d 324, 329, 332 (3rd Cir. 1993) (plaintiff alleged a retaliation claim based on the cancellation of her health insurance, the school conceded it had no religious reason for the cancellation, and the court thus held that "the prosecution of [her retaliation] claim will not lead to any inquiry regarding Church doctrine").

In those cases, where the asserted reason for the adverse employment action had no religious component, adjudication of the claim raised no First Amendment concerns for the obvious reason that no religious issue was under review. In contrast, petitioner was discharged from her employment at Eckankar's headquarters because she was excommunicated for religious reasons. Pet. App. A17. Accordingly, review of petitioner's claim that the basis for her termination was

"pretextual" would involve evaluation and consideration of religious reasons and thus is prohibited under the Establishment Clause.

Petitioner also relies on cases in which state-imposed limitations on free exercise were upheld upon a showing that the limitations were "essential to accomplish an overriding governmental interest." *United States v. Lee*, 455 U.S. 252, 257-58 (1982) (allowing the government to require participation by the Amish in the social security system notwithstanding their religious objections); *Prince v. Massachusetts*, 321 U.S. 158 (1944); (overriding state interest in enforcing child labor laws); *Reynolds v. United States*, 98 U.S. 145 (1878) (state interest in prohibiting polygamy). Pet. 7-8. In each of these cases, the Court identified a particular religious practice -- the existence of which was not in dispute -- that it found incompatible with an overriding government interest. No such religious practice is at issue here.

Finally, petitioner cites cases like *Tony & Susan Alamo Found. v. Secretary of Labor*, 471 U.S. 290, 304-05 (1985), and *Bob Jones Univ. v. United States*, 461 U.S. 574, 603 (1983), Pet. 7-8, in which government regulation of a religious organization was constitutionally permissible where it would not "interfere with the . . . right to freely exercise their religious beliefs" in the first place. *Alamo*, 471 U.S. at 304-05. *Alamo Foundation*, however, is entirely consistent with the decision under review here. The Court rejected the church's claim of "entanglement" on the ground that the governmental investigation into wages and hours of employment involved only "routine and factual inquiries" that are not "intrusive into religious affairs." 471 U.S. at 305-06. It certainly does not stand for the proposition that the government may intrude into such deeply religious matters as

excommunication. *Bob Jones* is even farther from the mark. In that case, the religious school did not raise "entanglement" claims; the only Establishment Clause issue was one of denominational discrimination (461 U.S. at 604 n. 30), which has no bearing on this case.

In sum, none of the cases cited by petitioner conflicts in any way with the court of appeals decision at issue here. There is no reason for further review by this Court.

C. The Remaining "Questions Presented" in the Petition Provide No Basis for Further Review by this Court

The remaining Questions Presented in the Petition state no basis for further review. The second Question Presented -- "[w]hether the duties of a computer programmer are purely secular or a 'core ecclesiastical matter'"-- ignores the fact that the decision below was properly focused upon the reasons for the discharge. The proper focus is not, as petitioner would suggest, on who she is and what her duties were, but rather, on whether inquiry into reasons for her excommunication would intrude into forbidden constitutional territory. Since there was an ample showing that the discharge rested upon core ecclesiastical doctrine, there was no need to reach any issue concerning petitioner's job duties and the court did not do so. Thus, the court of appeals affirmed the district court's ruling "that inquiry into Eckankar's proffered reasons for [the petitioner's] termination, that is, her excommunication, was impermissible under the United States and Minnesota Constitutions." Pet. App. A12. The constitutional bar to litigation of such claims would apply regardless of the nature

of petitioner's duties.[7] There is no need or basis for this Court to address petitioner's second Question Presented.

Finally, petitioner asks the Court to rule on the constitutionality of the Religious Freedom Restoration Act of 1993 ("RFRA"), which restored the compelling interest test to the Free Exercise Clause. *See* Question Presented No. 3. The court below expressly declined to rule on respondent's RFRA defense, noting that because petitioner's claims were barred by both the Minnesota Constitution and the federal Establishment Clause, there was no need to address the RFRA claim. Pet. App. A19. Accordingly, the constitutionality of that statute is not at issue, and would not be a proper subject for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 19, 1995 Respectfully submitted,

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[7] Indeed this Court had upheld the constitutionality of a statutory exemption which recognizes the right of churches to discharge an employee -- even one with ostensibly secular duties -- when the employee lacks a religious qualification required by the church. *Corp. of Presiding Bishop v. Amos*, 483 U.S. 325, 107 S. Ct. 2862 (1987) (building engineer dismissed from employment at nonprofit gymnasium).